IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)
Description of Case

S.A. No. 49 of 2006

Date of decision:-20-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:-20-7-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 49 of 2006

1. Shankar
2. Shravan
3. Pappu @ Ram Kumar
   All R/o Near Rawat Bhawan Petrol Pump
   Bhupatwala, Haridwar
   Tehsil and District- Haridwar ...Defendants /appellants

Versus

1. Surendra Singh Rawat
   S/o Shri Ratan Singh Rawat
2. Awtar Singh Rawat
   S/o Late Gabra Singh Rawat
   All R/o Near Rawat Bhawan Petrol Pump
   Bhupatwala Haridwar.
   Tehsil and District- Haridwar ..Plaintiffs /respondents

Sri Lok Pal Singh, learned counsel for the appellants.

Hon'ble J. C. S. Rawat, J.

This is a second appeal filed by the defendants/appellants against the judgment and order dated 26.04.2006 passed by the Additional District Judge / 4th F.T.C., Haridwar in Civil Appeal No. 75 of 2001 and the judgment and decree deed 27.07.2001 passed by the Civil Judge (Sr. Div.), Haridwar in O.S. No. 222 of 1991 titled Surendra Singh Vs. Rampat and others.

The brief facts for the disposal of this appeal are that the land in dispute was purchased by the defendants/appellants by a registered sale deed from Jagir Singh. It is also alleged that the

defendants/appellants had constructed over the property in dispute some construction in the year 1996 and also took the possession of the land in suit. The suit for perpetual injunction, mandatory injunction for the demolition of the construction raised by the defendants/appellants, and the mense profit and damages was filed before the Civil Judge (J.D.). The said suit was contested on the ground that the defendants/appellants had purchased this land in the year 1977 by receipt and he is in possession over the land in dispute. The defendants/appellants further pleaded that he had perfected his right by way of adverse possession. It was further alleged tat the civil court had no jurisdiction to entertain the suit. The suit is barred under the provision of section 331 for the U.P. Z.A. & L.R. Act.

The trial court framed the necessary issues. The courts below held that the plaintiffs/respondents were the owner of the disputed land and further held that the defendants/appellants had raised the construction illegally without any title over the disputed land. First appeal was preferred against the said judgment and decree. The first appellate court also dismissed the appeal confirming the findings of the trial court.

I have heard learned counsel for the appellants and perused the record.

While entertaining the second appeal it is to be kept in mind that the first appellate court is the final court of fact findings and pure findings of fact remain immune from challenge before the High Court in

second appeal. Now after the enforcement of the Amendment Act 1976, the first appellate court is also final court of law in the sense facts remained impugned from challenge before the High Court in second appeal. Now after the enforcement of the Amendment Act 1976, the first appeal is also final court of law in a sense that its decision on question for law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law of the erroneous findings of first appellate court even on question of law unless such question of law be a substantial question of law (See **AIR 2001 Supreme Court p/965, Santosh Hazari Vs. Purushottam Tiwari and (2005) 7 SCC p/60, Rajeshwari Vs. Puran Indoria)**

Now the question arises what is the substantial question for law. It is settled law that the scope of the jurisdiction for the question of law framed at the time of the admission is limited to the substantial question of law as to which would constitute substantial question of law it is also settled that a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be a substantial question of law a question of law must be debatable, not previously settled by the law of the land or a binding principle and must have material bearing on the decision for the case, if answered other way, in so far as the rights of the parties before it are concerned. To be a question for law involving in the

case, there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings for fact arrived at by the court of facts and it must be necessary to decided that substantial question of law for just and proper decision of the case. {**See (2005) 2 SCC p/500, Govindaraju Vs. Mariamman and Santosh Hazari (Supra)}**

In view of the above backdrop, I would like to discuss the point raised in this matter. The learned counsel for the defendants/appellants raised the contention that the civil court had no jurisdiction to try the case and the property in disputed comes within the jurisdiction of the Revenue Court. It was further contended that the plaintiff/defendants had not got the declaration u/s 143 of the U.P. Z.A. & L.R.Act and the nature of the land had not been changed in view of the section 3 which defines the land. It was further contended that the suit was barred by Section 331 of the U.P. Z.A. & L.R. Act. The suit was filed for the perpetual injunction and mandatory injunction, for the damages and mense profit and for the possession of the disputed land. It is also alleged in the plaint that the defendants/appellants had raised the construction over the land in the year 1996 and the plaintiffs/respondents had claimed the demolition of the same. It is settled position of law if the main relief is cognizable by the civil court, the suit can be filed before the civil court. It has to be seen which of the relief is the main relief and which relief or other relief is

ancillary relief. It is settled from the facts and circumstances for the case in hand that the main relives were demolition and injunction. A civil court would therefore have the power to entertain the suit where main relief sought by the plaintiffs/respondents were of injunction and demolition, a relief which could be granted by the civil court only. The relief of possession will be merely and ancillary relief which the civil court could grant after having taken the cognizance of the suit for injunction and demolition. Once the suit is maintained for the main relief in the civil court, then there is no bar for the civil court to grant possession flowing from the same cause of action. The determination for the question as to which out of the several relives arising from the same cause of action is the main relief will depend upon the relives claimed. In the present suit the relief perpetual injunction as well as mandatory injunction are the main relives and the relief for the possession is and ancillary relief. An identical case, the Allahabad High Court in **Ram Awalamb and others Vs. Jata Shankar and others reported in AIR 1969 Allahabad p/526** has held that if the suit for perpetual injunction and mandatory injunction alongwith the ancillary relief of possession have been filed before the civil court, the civil court had the right to entertain the said suit u/s 9 of the Civil Procedure Code.

Learned counsel for the defendants/appellants relied upon the judgment of the Apex Court in **Deokinandan and others Vs. Surajpal and others,**

1996 Revenue Decisions p/70. In that case, the suit for the possession over h property governed by the U.P. Z.A. & L.R. Act was filed for the possession of the said property. The Hon'ble Apex Court held that the suit is maintainable in the revenue court. The above proposition is in consonance with section 331 of the U.P. Z.A. & L.R. Act. This case is not applicable in the case in hand. The plaintiff/respondents had sought the main relief of perpetual injunction as well as mandatory injunction in the situ in hand.

Thus both the courts below had held that the civil court had got the jurisdiction to decide the case. Both the courts below were justified in holding that the civil court had the jurisdiction to try the suit. I do not find any illegality in the said finding.

It is also pertinent to mention here that I have gone through the entire judgment of the trial court as well as of the appellate court. Both the courts below had held that the plaintiffs/respondents is the owner of the disputed property. Both the courts below had held that the defendants/appellants had been claiming the title over the land by unregistered receipt which was executed in favour of the defendants/appellants in the year 1977. The learned courts below had held that this document is unregistered as such, it cannot be read in evidence u/s 17 and 49 of the Registration Act. It had also been held by both the courts below that the defendants/appellants had been claiming the possession over the property by way of receipt which is unregistered. Both the courts below were justified in

holding that the defendants/appellants could not be held to be the owner of the disputed land on the basis of unregistered receipt which did not confer right upon the defendants/appellants in view of section 17 / 49 for registration act. It ha been stated by the defendants/appellants in his written statement that the had been in possession over the land since 1976. Though he had adduced the evidence that he was in possession over the land since 1977. There was variance between the pleading and proof of the defendants/appellants. The defendants/appellants could not explain in the evidence whether he was in possession since 1976 as alleged in the W.S. or he was in possession from 1977 as alleged in the evidence from the date of the execution of the unauthorized deed. Thus the trail court was justified in registering the evidence of the defendants/appellants with regard to the possession. The learned trial court had also held that the defendants/appellants had not perfected the hostile title against the plaintiff/respondents. The suit was filed in the year 1991 and during the pendency of the suit, he took the possession of the land. On the other hand, ere is no perversity in the findings recorded by both the courts below. I am completely in agreement with the findings recorded by the courts below. I do not want to restate the effect of the evidence or reasons given by the courts below. Both the courts below had given the concurrent findings

It was further argued by the earned counsel for the defendants/appellants that the first appellate court

had not considered all the issues raised before the trial court. The learned counsel for the defendants/ appellants relied upon the judgment of the Apex Court reported in **(2001) 4 SCC 756, Madhukar and others Vs. Sangram and others.** In this case the suit was dismissed on the ground of the limitation and prior suit filed in the matter was operated *res judicata* against the defendants. After the dismissal of the suit, the first appeal was filed in the High Court, and the High Court after noticing some details from the judgment of the trial court as also pleadings of the parties, opined that the questions to be decided in the appeal were:-

1. Whether the relationship claimed by the parties is true?

2. Whether the plaintiff is entitled to declaration as prayed for?

The court passed a cryptic order in which he had not discussed the documentary and oral evidence. The appellate court decided the question of limitation and the question for res judicate. The Hon'ble Apex Court in the peculiar facts and circumstances of this case held that the judgment under appeal was so cryptic that none of the relevant aspects have even been noticed. It was observed that the appeal has been decided in a very unsatisfactory manner. The Hon'ble Apex Court set aside the order in the peculiar facts and circumstances of the case. In the case in hand, the appellate court has taken all the necessary issues involved in the case for the disposal of that appeal. It

is also pertinent to mention here that the contention raised by the defendants/appellants had been disused of by the lower appellate court. It is not the case of the defendants/appellants that he raised the certain contentions before the first appellate court but the first appellate court had not recorded the findings on those issues. I do not find any substance in the contention raised by the learned counsel for the defendants/appellants.

I have gone through the entire judgment of the courts below and I do not find any substantial question of law to be decided in the second appeal, as such the appeal does not bear any merit.

Accordingly, the appeal devoids of merit and is liable to be dismissed in limine and the same is accordingly dismissed.

(J.C.S. RAWAT, J.)

20th July, 2006
Shiv